

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - :
JORGE MARTINEZ-CISNEROS, : 13 Civ. 6888 (AT) (JCF)
: :
Petitioner, : REPORT AND
: RECOMMENDATION
- against - :
: :
MR. HUFFORD, Warden, :
: :
Respondent. :
- - - - - :
TO THE HONORABLE ANALISA TORRES, U.S.D.J.:

Petitioner Jorge Martinez-Cisneros, proceeding pro se, challenges the computation of his sentence of incarceration by the Federal Bureau of Prisons ("BOP") pursuant to 28 U.S.C. § 2241, arguing that the BOP failed to allow him credit against his federal sentence for time served pursuant to a conviction by the State of Nebraska. Because the BOP has since recalculated his sentence, I recommend the petition be denied as moot.

Background

Mr. Martinez-Cisneros was arrested by state authorities in Nebraska. (Letter of Jose A. Santana dated Feb. 11, 2014 ("Santana Letter"), attached as Exh. A to Letter of Kirti Vaidya Reddy dated May 13, 2014 ("Reddy Letter"), at 1). Before his prosecution by the State of Nebraska, he was transferred to federal custody pursuant to a writ. (Santana Letter at 1; Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("Pet."), ¶¶ 6-7). On December 16, 2008, Judge Donald E. O'Brien, U.S.D.J., sentenced him to a term of imprisonment of 136 months for conspiracy to distribute 500 or more grams of methamphetamine mixture. (Santana Letter at 1). Following his federal sentencing, he was returned to

the custody of state authorities and ultimately sentenced to a 12-year term of imprisonment for possession of a controlled substance with intent to deliver. (Santana Letter at 1; Pet., ¶¶ 6-7). Mr. Martinez-Cisneros satisfied his state obligation in October 2012, and thereafter commenced service of his federal sentence. (Santana Letter at 1).

Mr. Martinez-Cisneros subsequently filed this petition asserting that the BOP had not given him credit for the time he spent serving his Nebraska sentence, although the state court had ordered that sentence to be served concurrently with his federal sentence. (Pet., ¶¶ 6-7, 13). Because the discretion to decide whether a federal sentence should run concurrent with or consecutive to another sentence rests with the federal court, including in situations "where a federal judge anticipates a state sentence that has not yet been imposed," Setser v. United States, __ U.S. __, __, 132 S. Ct. 1463, 1468 (2012), the BOP requested clarification from Judge O'Brien regarding his intentions for the sentence he had imposed. (Reddy Letter at 1; Santana Letter at 2). Judge O'Brien determined that the sentence should run concurrently with the state term. (Letter of Donald E. O'Brien dated Feb. 28, 2014, attached as Exh. B to Reddy Letter). The BOP therefore "recalculated [Mr. Martinez-Cisneros'] sentence to state that [his] federal sentence began on December 16, 2008, providing him with credit against his federal sentence for the time he served in the custody of the State of Nebraska following the imposition of his

federal sentence."¹ (Reddy Letter at 1).

Conclusion

Because the BOP has given Mr. Martinez-Cisneros the relief he has requested, I recommend his petition be dismissed as moot. See, e.g., Mallela v. Apker, No. 05 Civ. 5684, 2007 WL 2873458, at *1 (S.D.N.Y. Sept. 26, 2007). Pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable Analisa Torres, Room 2210, and to the chambers of the undersigned, Room 1960, 500 Pearl Street, New York, New York 10007. Failure to file timely objections will preclude appellate review.

Respectfully submitted,


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
July 18, 2014

¹ I invited Mr. Martinez-Cisneros to "advise the Court in writing whether he agrees that the recalculation of his sentence renders his petition moot and, if not, why not (Order dated May 20, 2014), but he did not submit a response.

Copie mailed this date:

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